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DEN-MAT HOLDINGS, LLC  
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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
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12 DEN-MAT HOLDINGS, LLC,

13 Plaintiff,

14 v.  
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16 CAO GROUP, INC.,

17 Defendant.  
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Case No.: 2:18-cv-6358

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

1 Plaintiff Den-Mat Holdings, LLC (“DenMat”) brings this action seeking an  
2 order compelling defendant CAO Group, Inc. (“CAO Group”) (1) to forego suing it  
3 for patent infringement because it has forfeited such right in view of surviving  
4 provisions of a contract between it and CAO and (2) to return \$200,000.00 to  
5 DenMat that it improperly induced DenMat to pay. DenMat rightfully terminated  
6 the contract for each of two independent reasons: (a) CAO committed uncured  
7 material breaches of the contract, and (b) CAO anticipatorily repudiated the  
8 contract. DenMat also seeks a declaratory judgment that its termination was proper  
9 in view of CAO’s breaches.

### 10 INTRODUCTION

11 1. In 2015, CAO sued DenMat for patent infringement over certain  
12 patents related to soft-tissue diode lasers made and sold by DenMat (the “Patent  
13 Lawsuit”). DenMat sells the lasers to dentists and other licensed dental  
14 professionals. The DenMat laser systems consist of a laser-emitting unit and  
15 disposable surgical laser tips. The Patent Lawsuit was filed by CAO in Utah and  
16 then transferred to this District in October 2015.

17 2. The Patent Lawsuit was stayed for some time during proceedings at  
18 the U.S. Patent and Trademark Office. The stay was lifted in August 2017, after  
19 which DenMat and CAO initiated negotiations in an attempt to settle the Patent  
20 Lawsuit.

21 3. After more than four months of negotiations, the parties achieved a  
22 settlement of the Patent Lawsuit and that case was dismissed in October 2017. The  
23 settlement consisted of two new contracts between DenMat and CAO, each dated  
24 November 1, 2017: (a) “Manufacturing and Service Agreement” (the  
25 “Manufacturing Agreement”; and (b) “Nonexclusive Patent License” (the “License  
26 Agreement”). The gravamen of the settlement, and the two contracts, is that CAO  
27 agreed to take over manufacturing of DenMat’s dental lasers and supply them to  
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1 DenMat as a contract manufacturer. In exchange, DenMat would cease making  
2 lasers for itself and make certain payments to CAO contingent upon milestones to  
3 be met by CAO. In addition, DenMat received a perpetual, royalty-free license to  
4 CAO's laser patents, including the patents that were the subject of the Patent  
5 Lawsuit. Each party had the right to terminate the Manufacturing Agreement in the  
6 event the other committed an uncured material breach and, if DenMat so  
7 terminated, it would retain the royalty-free license under the License Agreement.  
8 (Manufacturing Agreement § 12.1(c) & 12.2(b)).

9 4. CAO committed multiple uncured material breaches of the  
10 Manufacturing Agreement. In fact, CAO refused to perform under the  
11 Manufacturing Agreement and unequivocally repudiated it by declaring it "dead on  
12 arrival" more than five months after it was signed. Despite express contract  
13 language prohibiting it from doing so, CAO insisted that it needed to deviate from  
14 DenMat's approved vendor list for laser components, source different types of  
15 components, and in some cases, redesign critical components entirely, in order to  
16 generate increased profits for itself under the Manufacturing Agreement. CAO also  
17 refused to acknowledge that the royalty-free license to DenMat under the License  
18 Agreement continues in full force and effect. Rather, CAO continues to threaten to  
19 sue DenMat once again for patent infringement.

20 5. Accordingly, after proper notice and the expiration of the cure period,  
21 DenMat terminated the Manufacturing Agreement pursuant to § 12.1(c) therein; the  
22 royalty-free license under the License Agreement continues in full force and effect.

### 23 **PARTIES**

24 6. Plaintiff DenMat is a citizen of the States of California and Delaware.  
25 DenMat has its principal place of business in Lompoc, California and is a limited  
26 liability company under the laws of the State of Delaware.  
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1           7. Upon information and belief, Defendant CAO is a citizen of the State  
2 of Utah. CAO is incorporated in Utah and has its principal place of business in  
3 West Jordan, Utah.

4           8. DenMat was founded in 1974 in Santa Maria, California and is in the  
5 business of making and selling equipment and materials to licensed dental  
6 professionals, including soft-tissue diode dental lasers used by dentists in the  
7 treatment of various oral conditions.

8           9. Upon information and belief, CAO was founded in 2000 in West  
9 Jordan, Utah and is a manufacturer of various equipment, including dental lasers,  
10 which it has manufactured for sale by itself and others since at least 2000.

#### 11                           **JURISDICTION AND VENUE**

12           10. This Court has subject matter jurisdiction over this action pursuant to  
13 28 U.S.C. § 1332 because the action is between citizens of different States and the  
14 amount in controversy exceeds \$75,000.00, exclusive of interest and costs. CAO is  
15 subject to the jurisdiction of this Court because, among other things, a substantial  
16 part of the events giving rise to this claim occurred in California, and the parties  
17 contractually consented to the jurisdiction of this Court. (Manufacturing  
18 Agreement, § 13.5).

19           11. Venue is proper in this District under 28 U.S.C. § 1391 and is proper  
20 in this Division pursuant to General Order 16-05, § I.B.1.a.(1)(c), because DenMat  
21 resides in the Western Division, a substantial part of the events giving rise to this  
22 claim occurred in this Division, and the parties contractually consented to venue in  
23 this Division. (Manufacturing Agreement, § 13.5).

#### 24                           **FACTS**

25           12. Because DenMat's lasers, like all dental lasers, are highly regulated  
26 medical devices subject to requirements by the U.S. Food & Drug Administration,  
27 the European Union Medical Device Directive (Regulation (EU) 2017/745), and  
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1 other regulatory bodies, it is critical that they be manufactured using only  
2 confirmed, safety-tested components from approved component vendors.

3 13. In addition, lasers and their components are subjected to exacting and  
4 strict electrical safety standards and testing set forth by, *inter alia*, the Institute of  
5 Electrical and Electronics Engineers (“IEEE”). The swapping out or substitution of  
6 a single component can cause the lasers to fail safety testing, which could cause  
7 both human injury and require DenMat to withdraw its lasers from markets in the  
8 U.S., E.U., and elsewhere.

9 14. For these reasons, during negotiations with CAO, DenMat sought  
10 contractual provisions (1) requiring CAO to make DenMat’s lasers according to  
11 DenMat’s existing specifications using DenMat’s tested and approved components  
12 and vendors, and (2) prohibiting CAO from changing any components, vendors, or  
13 work instructions. CAO expressly agreed to these contract provisions.

14 15. Accordingly, the Manufacturing Agreement set forth (a) express terms  
15 prohibiting CAO from making any changes to the lasers, including “any bills of  
16 materials, vendors, or work instructions without prior written approval of DenMat,”  
17 (Manufacturing Agreement, § 9.5); and (b) express terms requiring CAO to make  
18 the Products “in accordance with DenMat’s specifications, drawings, and technical  
19 requirements, *using approved vendors and components*,” *id.* (emphasis added).

20 16. The parties also negotiated, at length, the price that CAO would  
21 charge DenMat for the lasers. During the negotiations, CAO told DenMat that it  
22 had “taken apart” the DenMat lasers and knew exactly how to make them and how  
23 to determine the cost to make them. CAO also emphasized that it has manufactured  
24 dental lasers for more than twenty (20) years, including for some of the larger laser  
25 sellers in the dental market. CAO assured DenMat that making its lasers would be  
26 simple and well within its manufacturing competency. The parties eventually  
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1 agreed on exact pricing that CAO would charge DenMat to make its lasers.  
2 (Manufacturing Agreement, § 5.2).

3 17. The Manufacturing Agreement and the License Agreement were  
4 signed on or about November 1, 2017. Thereafter, DenMat expended considerable  
5 efforts to help CAO commence manufacturing of the DenMat lasers.

6 18. On November 17, 2017, DenMat sent a team consisting of its Chief  
7 Operating Officer, Senior Director of Manufacturing, and its Quality Assurance  
8 manager to CAO's facility in Utah to assist the CAO team. That same day, DenMat  
9 established a direct File Transfer Protocol ("FTP") site so that the CAO team could  
10 have direct access to engineering drawings, component specifications, work  
11 instructions, vendor lists, quality control processes, and other information that  
12 would be helpful in CAO's manufacturing of the DenMat lasers.

13 19. On November 28, 2017, DenMat arranged for the CAO team to  
14 participate in a conference call with DenMat's outsourced team of electrical  
15 engineers so that CAO could conduct a question and answer session related to  
16 technical specifications of the DenMat lasers.

17 20. On December 8, 2017, DenMat hosted members of CAO's team at  
18 DenMat's facility to develop an inventory transfer plan so that CAO could soon  
19 begin building the DenMat lasers and sourcing the required components. On or  
20 about January 5, 2018, DenMat shipped to CAO, at no charge, components so that  
21 it could perform a pilot build of a few laser units. In addition, DenMat built and  
22 sent, at no charge, a variety of production and test fixtures to CAO to facilitate the  
23 pilot build.

24 21. On February 20, 2018 DenMat sent two of its laser manufacturing  
25 technicians, including its lead laser technician to CAO's facility in Utah to assist  
26 them in the qualification and validation process required for CAO to manufacture  
27 lasers.  
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1           22. DenMat manufacturing, operations, and regulatory personnel engaged  
2 in dozens of telephone conferences and email exchanges with CAO personnel,  
3 totaling hundreds of person-hours.

4           23. In November 2017, in good faith belief that CAO would honor the  
5 contract, DenMat paid CAO \$200,000.00 as Payment No. 1 per the terms of the  
6 License Agreement. (License Agreement, § 4).

7           24. Despite DenMat's efforts to help CAO commence manufacture of the  
8 lasers, and despite DenMat's agreement to extend certain deadlines, CAO missed  
9 the delivery deadlines for the lasers and continued to insist that it be allowed to find  
10 its own components and vendors for the parts to make the lasers.

11           25. On or about May 16, 2018, Densen Cao, the Chief Executive Officer  
12 of CAO, surprised DenMat by telling DenMat's Chief Executive Officer,  
13 unequivocally, that it no longer will honor the contract. In fact, Cao told DenMat  
14 that the contract was "D.O.A.," i.e., dead on arrival. The reason for CAO's  
15 repudiation became clear that same day.

16           26. By letter dated May 16, 2018 from CAO to DenMat, CAO stated:  
17 "CAO has determined that the act of assuming manufacturing is simply *not*  
18 *economically viable under the terms* of continued purchase of parts and materials  
19 exactly as DenMat is doing now. *For this activity to be profitable, CAO must make*  
20 *some adjustments to the sourcing of components for these products.*" (Proposal for  
21 Next Steps in CAO Group's Assuming Manufacture of DenMat Lasers, ¶ 1  
22 (emphasis added).

23           27. In other words, after lengthy negotiations with CAO, which had  
24 induced DenMat to enter into a settlement and manufacturing contract on the false  
25 premise that CAO would perform, CAO suddenly announced to DenMat that it  
26 would not, in fact, perform its duties and obligations. CAO repudiated despite the  
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1 fact that nothing changed during the time of negotiating, signing, and performance  
2 due under the contract—except CAO’s desire to make more money out of the deal.

3 28. On or about June 4, 2018, Densen Cao told DenMat that CAO  
4 “definitely is not able to perform [under the contract] if we have to use your  
5 vendors.”

6 29. On or about June 22, 2018, CAO demanded that DenMat pay it more  
7 for the lasers than the bargained-for contractual prices set forth in the  
8 Manufacturing Agreement—again, simply so that CAO could make more money  
9 from the deal. DenMat declined and requested that CAO honor the terms of the  
10 contract as written and agreed upon.

11 30. As of the filing date of the instant action, CAO still has not fulfilled  
12 even the Initial Purchase Order that it had represented it would fulfill no later than  
13 March 1, 2018.

14 31. DenMat repeatedly asked CAO to perform under the terms of the  
15 Manufacturing Agreement, and even agreed that as long as CAO initially made the  
16 lasers under the terms of the contract, DenMat would consider, in good faith,  
17 allowing CAO to use substitute components and vendors at some point in the  
18 future, as long as such substitutes did not compromise the safety, efficacy, and  
19 regulatory approval status of the lasers.

20 32. CAO adamantly refused and insisted that it be allowed unilaterally to  
21 find any components and vendors, and asked for an increase to the negotiated price  
22 for the laser units, that would allow it to make more money under the  
23 manufacturing contract.

24 33. On May 29, 2018, DenMat sent a letter to CAO acknowledging  
25 CAO’s anticipatory repudiation of the contract. (Letter dated May 29, 2018 from  
26 T. Tiberi to T. Jones).



1           34. CAO continued to insist it could choose its own components and  
2 vendors. Revealing what appear to be CAO's true intentions, it threatened to "re-  
3 file" the patent litigation lawsuit against DenMat, insisted on keeping DenMat's  
4 initial good-faith \$200,000.00 payment, and demanded DenMat pay it a 10%  
5 royalty on all of its laser products—despite the clear terms of the License  
6 Agreement setting for a royalty-free license where, as here, CAO materially  
7 breached the Manufacturing Agreement.

8           35. On June 4, 2018, DenMat provided formal written notice to CAO of  
9 its material breaches of the Manufacturing Agreement. (Letter dated June 4, 2018  
10 from T. Tiberi to T. Jones). Such breaches included, but were not necessarily  
11 limited to, breaches of Manufacturing Agreement § 9.5 (failure to "manufacture the  
12 Products in accordance with DenMat's specifications, drawings, and technical  
13 requirements, using approved vendors and components") and § 11.3 (failure to  
14 honor its representation that "it has the right, ability and intention to enter into this  
15 Agreement and perform its obligations hereunder . . ."). (Manufacturing Agreement  
16 §§ 9.5 & 11.3).

17           36. Remarkably, CAO continued to insist it could choose its own  
18 components and vendors in direct contrast to express, bargained-for contract  
19 language prohibiting exactly that.

20           37. On June 26, 2018, in view of CAO's failure to cure its breaches,  
21 DenMat provided written Notice of Termination of the contract, demanded a return  
22 of the \$200,000.00 it paid to CAO, and asked CAO to acknowledge that DenMat's  
23 termination was proper (and walk away from the contracts); DenMat also offered  
24 CAO the opportunity to engage in arbitration over the dispute. (Letter dated June  
25 26, 2018 from T. Tiberi to T. Jones).

26           38. As of the filing date of the instant action, CAO has refused to  
27 acknowledge that DenMat's termination was proper, refused to refund the  
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1 \$200,000.00, refused to engage in arbitration, and continues to threaten DenMat  
2 with a patent infringement lawsuit.

3 **FIRST CLAIM FOR RELIEF**

4 **(Declaratory Judgment: Contract Termination was Proper; CAO Must be**  
5 **Enjoined from Filing Infringement Lawsuit)**

6 39. Plaintiff realleges and incorporates by reference each allegation set  
7 forth above.

8 40. An actual controversy has arisen and now exists between DenMat, on  
9 one hand, and CAO, on the other, as to whether DenMat's termination of the  
10 Manufacturing Agreement was a termination under § 12.1(c) of the Manufacturing  
11 Agreement and thus whether CAO is prohibited from suing DenMat for patent  
12 infringement.

13 41. Plaintiff desires a judicial declaration that such termination was  
14 proper and triggered § 12.1(c) of the Manufacturing Agreement based on each of  
15 two, independent grounds for termination: (1) CAO committed one or more  
16 uncured material breaches of the Manufacturing Agreement; and (2) CAO  
17 committed anticipatory repudiation of the Manufacturing Agreement.

18 42. Plaintiff also seeks a preliminary and permanent injunction enjoining  
19 CAO from filing a patent infringement lawsuit against DenMat based on its attempt  
20 to ignore the royalty-free license granted to DenMat pursuant to the License  
21 Agreement.

22 43. A declaration of rights and associated injunctive relief are necessary  
23 and appropriate because no other adequate remedy exists by which DenMat's rights  
24 under the Manufacturing and License Agreements may be determined and  
25 protected.

26 44. DenMat therefore respectfully requests that the Court issue an order  
27 (a) declaring that DenMat's termination of the Manufacturing Agreement was  
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1 pursuant to Manufacturing Agreement § 12.1(c); and (b) enjoining CAO from  
2 moving forward with another patent infringement lawsuit against DenMat in direct  
3 contravention of the Manufacturing and License Agreements.

4 **SECOND CLAIM FOR RELIEF**

5 **(Injunction: Unjust Enrichment; Restitution;**

6 **CAO Must Repay DenMat its \$200,000.00 Payment)**

7 45. Plaintiff realleges and incorporates by reference each allegation set  
8 forth above.

9 46. An actual controversy has arisen and now exists between DenMat, on  
10 one hand, and CAO, on the other, as to whether CAO negligently (or fraudulently)  
11 induced DenMat to enter into the Manufacturing and License Agreements because  
12 CAO knew that it would not perform under the Manufacturing Agreement, and  
13 therefore DenMat should not have paid it \$200,000.00 as Payment No. 1 under the  
14 License Agreement.

15 47. Plaintiff desires a judicial declaration that such payment was based on  
16 negligent (or fraudulent) inducement and must be returned to DenMat as unjust  
17 enrichment and restitution.

18 48. A declaration of rights and associated injunctive relief are necessary  
19 and appropriate because no other adequate remedy exists by which DenMat's rights  
20 under the Manufacturing and License Agreements may be determined and  
21 protected.

22 49. DenMat therefore respectfully requests that the Court issue an order  
23 requiring CAO to refund it the \$200,000.00 payment that DenMat should not have  
24 owed CAO in view of CAO negligent (or fraudulent) inducement of DenMat to  
25 enter the Manufacturing and License Agreements.

26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiff hereby requests that this Court:  
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1           A.     Declare that DenMat's termination of the Manufacturing Agreement  
2 was proper pursuant to Manufacturing Agreement § 12.1(c);

3           B.     Enter a temporary and permanent injunction enjoining Defendant from  
4 filing a patent infringement lawsuit against DenMat as prohibited by the  
5 Manufacturing and License Agreements;

6           C.     Enter an order requiring CAO to return DenMat's payment to CAO in  
7 the amount of \$200,000.00;

8           D.     Enter an award of attorneys' fees and costs pursuant to Manufacturing  
9 Agreement § 13.2; and

10          E.     Award such other and further relief as this Court deems just and  
11 proper.

12  
13 DATED: July 23, 2018

Respectfully submitted,

14 TIBERI LAW OFFICE

15  
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